

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. \_\_\_\_\_

STATE OF WEST VIRGINIA EX REL. AMERISOURCEBERGEN DRUG CORPORATION,  
CARDINAL HEALTH, INC., AND MCKESSON CORPORATION,

Petitioners,

v.

THE HONORABLE DAVID W. HUMMEL, JR., JUDGE OF THE CIRCUIT COURT OF  
MARSHALL COUNTY, WEST VIRGINIA,

Respondent.

*From the Circuit Court of Marshall County, West Virginia  
Civil Action Nos. 17-C-248, 17-C-249, 17-C-250, 17-C-251, 17-C-252,  
17-C-253, 17-C-254, and 17-C-255*

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PETITION FOR WRIT OF PROHIBITION

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A. L. Emch (WVSB #1125)  
aemch@jacksonkelly.com  
Gretchen M. Callas (WVSB #7136)  
gcallas@jacksonkelly.com  
JACKSON KELLY PLLC  
500 Lee Street, East, Suite 1600  
P.O. Box 553  
Charleston, WV 25322  
Telephone: (304) 340-1000  
Facsimile: (304) 340-1130  
*Counsel for Petitioner AmerisourceBergen Drug  
Corporation in actions filed by Brooke, Harrison,  
Hancock, Lewis, Marshall, Tyler, and Wetzel  
Counties*

Harry G. Shaffer III (WVSB #3344)  
hshaffer@shafferlaw.net  
Todd A. Mount (WVSB #6939)  
tmount@shafferlaw.net  
SHAFFER & SHAFFER PLLC  
P.O. Box 38  
Madison, WV 25130  
Telephone: (304) 369-0511  
Facsimile: (304) 369-5411  
*Counsel for Petitioner AmerisourceBergen  
Drug Corporation in action filed by Ohio County*

Exhibit 1

Russell D. Jessee (WVSB #10020)  
russell.jessee@steptoe-johnson.com  
STEPTOE & JOHNSON PLLC  
Chase Tower, 17<sup>th</sup> Floor  
P.O. Box 1588  
Charleston, WV 25326  
Telephone: (304) 353-8000  
Facsimile: (304) 353-8180

William D. Wilmoth (WV Bar #4075)  
william.wilmoth@steptoe-johnson.com  
STEPTOE & JOHNSON PLLC  
P.O. Box 751  
Wheeling, WV 26003-0751  
Telephone: (304) 233-0000  
Facsimile: (304) 933-8183  
*Counsel for Petitioner McKesson Corporation in  
actions filed by Brooke, Hancock, Ohio, Tyler, and  
Wetzel Counties*

Brian A. Glasser (WVSB #6597)  
bglasser@baileyglasser.com  
Steven R. Ruby (WVSB #10752)  
sruby@baileyglasser.com  
Raymond S. Franks II (WVSB #6523)  
rfranks@baileyglasser.com  
BAILEY GLASSER, LLP  
209 Capitol Street  
Charleston, WV 25301  
Telephone: (304) 345-6555  
Facsimile: (304) 342-1110  
*Counsel for Petitioner Cardinal Health, Inc.*

Jeffrey M. Wakefield (WVSB #3894)  
FLAHERTY SENSABAUGH BONASSO PLLC  
P.O. Box 3843  
Charleston, WV 25338-3843  
Telephone: (304) 345-0200  
Facsimile: (304) 345-0260  
*Counsel for Petitioner McKesson Corporation in  
actions filed by Lewis and Marshall Counties*

Daniel C. Cooper (WVSB #5476)  
Dan.cooper@cooperlawwv.com  
Jamison H. Cooper (WVSB #8043)  
jami.cooper@cooperlawwv.com  
COOPER LAW OFFICES, PLLC  
240 Main Street  
Bridgeport, WV 26330  
Telephone: (304) 842-0505  
Facsimile: (304) 842-0544  
*Counsel for Petitioner McKesson Corporation in  
action filed by Harrison County*

## INTRODUCTION

There is no doubt of the need to address the national opioid crisis, but this lawsuit brought by eight counties (“Counties”) against these wholesale prescription drug distributors (“Distributor Defendants”) does not present cognizable grounds for judicial relief. The Counties’ causes of action all turn on allegations that the Distributor Defendants have violated certain requirements contained in the West Virginia Controlled Substances Act (“WVCSA”) and they attempt to rely on aspects of the federal Controlled Substances Act (“CSA”). But the Counties do not have regulatory authority over the Distributor Defendants’ handling of controlled substances, including prescription opioid medications. It is the federal Drug Enforcement Administration (“DEA”) and state regulatory bodies—here, the West Virginia Board of Pharmacy (“BOP”)—that are vested with exclusive authority to enforce the regulatory regimes for controlled substances and to impose sanctions for violations, as a Connecticut court recently held in a case involving similar claims asserted by local governmental entities in that state’s consolidated opioid litigation. *See City of New Haven v. Purdue Pharma, L.P.*, No. X07-HHD-CV-17-6086134-S, 2019 WL 423990 (Conn. Super. Ct. Jan. 8, 2019) (dismissing all claims). And it is federal and state authorities that are vested with exclusive authority to seek criminal penalties for violations of the controlled substances laws.

Nonetheless, the Counties’ lawsuit attempts to assume this enforcement role. Through this litigation, the Counties seek reimbursement from the Distributor Defendants, in the form of a judicial damages award, for expenditures the Counties made for health care, law enforcement, and other public services provided to individual county residents who were injured due to misuse of or addiction to opioids. The Counties make these claims and seek these damages even though the Counties do not allege that the Distributors examined patients, diagnosed the severity of their pain, or prescribed opioids for them. Doctors did that. Nor do the Counties allege that Distributors